

## Most Favored Nation Clauses (MFNs)

- “Most favored nation” language is not uncommon in contracts and is widely used in a number of different industries. Simply put, its purpose is to secure the lowest price for a product or service, and ensure that no other entity gets a better deal.
- In deposition testimony in Dec 2011 in the matter of DOJ v BCBSM, one hospital CEO testified that MFNs are included in contracts "all the time in Michigan." In fact, other insurers, including Aetna and Priority, have sought and received MFNs in Michigan.
- BCBSM has used MFN clauses because we think it is our role to negotiate with hospitals to get the best deal possible for our customers and reduce their health care costs.
- The Insurance Commissioner issued a ruling to ensure he is able to approve or reject the use of these clauses so that he can evaluate on a case by case basis whether the use of these clauses is appropriate.

**Establishing the Insurance Commissioner's authority in state law to approve or reject MFN clauses is the best way to resolve concerns:**

*It will ensure the commissioner is able to stop specific MFN clauses if they are being used inappropriately, but not ban clauses that are effectively reducing health care costs for the people of Michigan.*

## Although Governor Snyder's plan provides a level playing field, BCBSM competitors continue to ask for more

### Before they wanted level regulation...

"Competition on a fair playing field, where all companies are **regulated equally** and no company gets special treatment from state law, is widely recognized as critical to meeting consumers needs while holding down costs."

– ***Rick Murdock, Executive Director, Michigan Association of Health Plans***  
(Detroit Free Press, 1/25/11)









### Now they want level results.

"They're looking for a level playing field in regulatory arena," he said. "Our issues have always been in terms of a level playing field in terms of the market."

– ***Rick Murdock, Executive Director, Michigan Association of Health Plans***  
(Gongwer, 10/31/12)



## **BCBSM competitors have demanded a level playing field and with this legislation, competitors will achieve much of what they have historically asked for**

-  **“ A level playing field with the same rules for all insurers**  
(MAHP, Detroit Free Press, 1/15/11) **”**
-  **“ BCBSM should have to pay state and local taxes**  
(MAHP, Crains, 8/5/12) **”**
-  **“ Language on the future use of most favored nation clauses.**  
(MAHP Senate Insurance Committee Testimony, 9/20/12) **”**
-  **“ Language that the new nonprofit foundation “would be at arm's length from BCBSM and not among its subsidiaries.**  
(MAHP Senate Insurance Committee Testimony, 9/20/12) **”**
-  **“ Language that would provide protection and full recovery of assets to the State of Michigan in the event of a sale of BCBSM to a for-profit company or conversion to a for-profit mutual.**  
(MAHP Senate Insurance Committee Testimony, 9/20/12) **”**
-  **“ Language to prohibit predatory pricing and establishing premium rates below costs. Current insurance code already prohibits this in three places: MCL 500.3405(4), MCL 500.3631(7), and MCL 500.3533(2)**  
(MAHP Senate Insurance Committee Testimony, 9/20/12) **”**

## **MAHP claims that there are no prohibitions on predatory pricing.**

“PA 350 forbids BCBSM from establishing rates that are not adequate to cover its cost; there is not a similar provision in the insurance code.

– **Joe Aoun** (*House Insurance Committee Testimony, 11/19/12*)

**MCL 500.3631(7)** The rates charged by an insurer for coverage under policies issued under this section shall not be unreasonably lower than what is necessary to meet the expenses of the insurer for providing this coverage and shall not have an anticompetitive effect or result in predatory pricing in relation to prudent purchaser agreement coverages offered by other organizations.

- The Insurance Code prohibits predatory pricing in three places:
  - Chapter 34 – Individual Products (MCL 500.3405(4))
  - Chapter 35 – HMO Products (MCL 500.3533(2))
  - Chapter 36 – Group Products (MCL 500.3631(7))

**BCBSM competitors continue to argue that the regulatory playing field will not be level under the Governor's plan. In fact, key remaining regulatory advantages benefit BCBSM competitors**

**The governor's plan would create an equal opportunity for insurers to gain customers – by offering high quality products and controlling costs**

- HMOs would continue to not pay federal or state taxes
- Only the Blues would be required to pay \$1.5 billion into the new nonprofit fund
- Other insurance carriers contribute nothing although they have accumulated billions in profits and reserves because of the special advantages the current regulatory structure provides
- Only the Blues would subsidize Medigap by over \$200 million a year for the next 4 years



# MAHP claims BCBSM is a “monopoly by any measure” but BCBSM competitors cover over 2.5 million people in Michigan<sup>1</sup>

Some insurers are growing, and expect to grow more...



- Priority's "combined year-end financials show the company gaining 20,000 new members and earning a \$34 million net profit with \$2.3 billion in revenues... This company is approaching health reform and the coming year well positioned to grow." (Priority Health Press Release, 3/26/12)



- "HAP is experiencing a dramatic uptick in its individual enrollment trend...HAP predicts enrollment in its new line of individual products will have more than 50,000 members by 2015." (HAP Press Release, 6/12/12)



- "HealthPlus of Michigan is positioning itself to get a bigger slice of the insurance pie as impending federal and state rule changes could spark more competition for insurers. 'We compete in a pretty strong, competitive market and have some very big competitors in the marketplace,' said Raj Bajpai, director of marketing and product development at HealthPlus. (Mlive, 11/4/12)

- BCBSM has been the only insurer to guarantee coverage to Michigan citizens all year
- If other insurers truly had wanted to increase their market share, they should have stopped rejecting customers

... and other insurers don't want to grow unless they can make enough profit



- Aetna "...will not attempt to aggressively increase market share and put at risk the maintenance of our margin profile. When faced with the choice, Aetna will always choose (profit) margins over membership." (Aetna 3rd Quarter Investor Call, 10/25/12)
- Aetna made nearly \$500 million in profit in the 3rd quarter of 2012 alone